



Idaho Asphalt Supply, Inc.



Asphalts • Road Oil

P.O. Box 941, Blackfoot ID 83221-0941

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IAS CONTRACT No: 32834

DATE: 3/18/2024

PROJECT #:

PROJECT: Year 2024 Road Oils

BUYER: TETON COUNTY - ID

DATE OF BID LETTING: February 12, 2024

STREET ADDRESS OR SITE:

OWNER:

70 N. West Buxton

Driggs, ID 83422

1. **Project Details.** Idaho Asphalt Supply, Inc (“Seller”) agrees to sell and deliver to TETON COUNTY - ID (“Buyer”), or cause to be sold and delivered to Buyer asphalt product(s) of the kinds and quantities (the “Products”) listed below and under the terms and conditions set forth in this Agreement, and Buyer agrees to purchase and receive and pay for the same, for use by Buyer on the above Project, on the terms and conditions herein stated:

| PRODUCT | QUANTITY (Tons) | UNIT PRICE Excluding Sales Tax | Effective Thru | FREIGHT Per Ton | F.O.B. |
|--|--------------------|---|-------------------|--------------------|-----------|
| CRS-2R | 340.00 | \$595.00 | 10/31/2024 | \$40.00 | Blackfoot |
| CRS-2 | 5.00 | \$568.00 | 10/31/2024 | \$40.00 | Blackfoot |
| DISTRIBUTOR SERVICE \$2,000.00 Minimum Charge | | \$56.00/TON or \$250.00/HR (Whichever is Greater) | | | |

Special Contract Provisions:

Pricing "piggybacks" awarded offering to the Commissioners of the Power County Highway District on February 12, 2024 and will remain firm for the 2024 season. Fuel surcharge on freight will be assessed once the e.i.a. diesel fuel index for the Rocky Mountain region meets and exceed \$3.10/gallon.

2. **Price Terms.** The price for the above Products is valid through the **2024** season and is based upon product(s) sold by Seller FOB one of Seller’s facilities. Seller reserves the right to supply product(s) from any of Seller’s or its affiliated facilities.

3. **Adjustments for Escalation.** If a price escalation for the Products subject to this Agreement occurs automatically or is invoked by Seller or Buyer in accordance with state contract specifications, Buyer agrees to pay Seller, or pass directly through to Seller, the amount of such escalation in addition to the prices above within fifteen (15) days of Buyer’s receipt of such escalation. Buyer will provide Seller with all information pertinent to escalation. Escalation/de-escalation amounts will be reconciled monthly and invoiced as a debit/credit based on monthly shipping reports.

4. **Schedule.** Buyer and Seller shall agree in writing to a delivery schedule at least thirty (30) days prior to commencement of the Project. Proposed changes to the project delivery schedule must be submitted to Seller in advance via facsimile or electronic mail and will be fulfilled at the discretion of Seller; Seller shall not be responsible for delay or back charges resulting from such schedule changes. Buyer shall provide to Seller a written order for all Products to be delivered by Seller at least one (1) week prior to the requested delivery date. If Buyer does not take delivery of ordered product in accordance with the delivery schedule, Buyer may be held responsible for Seller’s costs for said product, including, but not limited to: manufacturing, additive, storage and reprocessing costs. Buyer shall notify Seller immediately of any Project change orders or anticipated volume changes for which the changes are in excess of ten percent (10%) of the original order. Quantities deleted in excess of 10% of the original order may be subject to restocking fees or reprocessing costs while quantity overruns exceeding 10% of the original order are subject to re-pricing based on current market conditions.

5. **Payment/Billing.** Seller shall submit to Buyer an invoice, sent to the address indicated above, evidencing amounts due pursuant to this Agreement (the “Invoice”). Invoice amount(s) are due and payable by **the 15th of following month**. Buyer shall submit a copy of each invoice or invoice number with payment. Any invoice amounts not paid in accordance with the terms stated above shall bear interest at a rate of 1¾% per month from and as of the due date. In the event payment is not received as stated above Seller may, at its discretion, suspend further shipment(s) to Buyer. Buyer does not have the right to offset for any reason.

Bid Number: 32834

Buyer Initials _____ Contract # 32834

6. Specifications - Seller's Limited Liability. The Products will conform to the specifications of the Idaho Transportation Department. Conformity of the Products to such specifications shall be determined by Seller's certified test results at the point of title transfer. Buyer agrees to strictly adhere to Seller's Product Handling Guidelines. In the event anti-strip is added to any product at the request of Buyer, Seller shall not be responsible for any resulting non-conformance of the product. IN THE EVENT PRODUCT IS DELIVERED TO BUYER THAT DOES NOT CONFORM TO THE AGREEMENT SPECIFICATIONS AT THE POINT OF TITLE TRANSFER, THE EXTENT OF SELLER'S LIABILITY IS EXPRESSLY LIMITED TO THE COST OF REPLACEMENT OF ANY SUCH NON-CONFORMING PRODUCT. SELLER SHALL NOT BE LIABLE TO BUYER OR A THIRD PARTY FOR ANY OTHER DAMAGES, INCLUDING, WITHOUT LIMITATION, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES. BUYER SHALL BEAR THE BURDEN OF PROOF THAT THE PRODUCTS FAILED TO CONFORM TO THE APPLICABLE SPECIFICATIONS AT THE POINT OF TITLE TRANSFER.

7. Product Return Policy. Products may only be returned upon Seller's written approval. In the event Seller agrees in writing to accept the return of any Product, Buyer shall be responsible for the full transportation costs, including, without limitation, restocking fees on the returned Product and, in the event of transportation arranged by Seller, any incidental charges as set forth under Paragraph 8. In the event Seller agrees to accept return of contaminated and/or diluted material, Buyer shall be responsible for all reprocessing and/or additional chemical costs.

8. Seller-Arranged Transport. If Seller agrees to arrange for transportation of the Product by a carrier, additional charges will apply, including, freight/transportation charges, which are a separate item. Product shall be shipped by any carrier designated by Seller. Delivery of quantities less than 30-tons will result in minimum freight charges. Where specified, freight prices are subject to a fuel surcharge at the time of delivery. A surcharge schedule is available upon request. Buyer agrees to pay the following additional charges as invoiced: (i) Unloading fees in excess of 3.00 hours, \$150.00 per hour, (ii) Overnight holdover fee, \$450.00 per night, (iii) Restocking fee on returned product, \$250.00, (iv) Multiple location unload fee, \$200.00 per each additional site, Equipment charge for jobsite pump-off flat fee, each occurrence (no polymer modified asphalts) \$150.00. Truck hold fee for each truck placed on hold at the plant by the customer in excess of 2.00hours, \$150.00 per hour. Freight charges will be assessed and invoiced at 50% of the quoted freight rate per ton for returned product.

9. Buyer-Arranged Transport. Unless Seller agrees to arrange for the transportation of the Product in writing, Buyer shall be responsible for arranging the transportation of the Product. Buyer agrees to provide to Seller all Seller required insurance documentation for carrier to access any Seller facility.

10. Bond Disclosure. Upon written request by Seller, Buyer agrees to provide a copy of the applicable contractor's bond or payment bond, which shall include the name and address of the general contractor and the owner of the property.

11. Transfer of Title/Risk of Loss. Title and risk of loss for the Products transfers to Buyer at the loading flange of Seller's facility.

12. Seller's Right to Lien. Seller is entitled to full lien and other rights provided by law to a supplier or installer of materials for all Products supplied.

13. Unfulfilled Agreement Penalty. If Buyer has failed to take delivery of at least seventy-five percent (75%) of the contracted Product(s) by the end of the applicable delivery schedule, Buyer shall pay to Seller an amount equal to (a) the purchase price of the contracted Products that have not been delivered to Buyer, multiplied by (b) fifteen percent (15%) (the "Unfilled Agreement Penalty"). For purposes of this paragraph, the determination of the Unfilled Agreement Penalty shall exclude any Products requested by Buyer which Seller opted not to supply pursuant to Paragraph 14 of this Agreement.

14. Termination. Seller may terminate this Agreement if, in Seller's reasonable judgment, Buyer is unworthy of commercial credit or is in default of this Agreement. In addition, Seller may immediately terminate this Agreement and any other contract between the parties without advance notice in the event Buyer is in default for non-payment pursuant to this Agreement or any other agreement between the parties hereto.

15. Force Majeure. Seller shall be relieved from liability for failure to deliver the Products for the time, and to the extent, such failure is occasioned by: government regulation, shortage of transportation, raw materials and/or supplies, disruption or breakdown of production or transportation facilities or equipment, war, fire, explosion, riot, strike or other industrial disturbance, act of God, or Seller's inability, after reasonable diligence, to obtain necessary equipment, materials or supplies, in whole or in part, at reasonable prices in relation to the prices established herein, or by any other cause, whether or not listed above, which is beyond the reasonable control of Seller.

16. Buyer's Indemnification of Seller. Buyer agrees to defend and indemnify Seller against any private or public administrative or judicial inquiry or action brought under any local, state, or federal environmental laws or rules as a result of Buyer's use of any Products

Bid Number: 32834 Buyer Initials _____ Contract # 32834

purchased under this Agreement. Buyer further agrees to defend and indemnify Seller against any private or public administrative or judicial inquiry or action brought under any local, state, or federal environmental laws or rules as a result of Seller's transport of any Product to a site selected or designated by Buyer.

17. Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of Idaho without regard to conflicts-of-laws principles that would require the application of any other law. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement may only be brought against a Party in the State courts sitting in Idaho Falls, Idaho or Federal courts sitting in Pocatello, Idaho and each Party consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objections to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any Party anywhere in the world.

18. Integration. This Agreement embodies the entire Agreement between Seller and Buyer and supersedes any prior agreement for the Project, whether oral or written.

19. Fees and Costs. Should Buyer default in the performance of any of the covenants or agreements contained herein, Buyer shall pay to Seller all costs and expenses, including but not limited to a reasonable attorney fees, including such fees on appeal, which Seller may incur in enforcing this Agreement or in pursuing any remedy allowed by law for breach hereof, whether such is incurred by the filing of suit or otherwise.

20. Modifications, Waiver, and Assignment. Modification of this Agreement is valid only if executed in writing by the parties hereto. Waiver of any breach by Seller or Buyer of any terms, conditions or obligations hereto shall not be deemed a waiver of subsequent breaches of the same or other nature. Buyer may not assign this Agreement or any interest herein without the prior written consent of Seller

21. Ratable for Commercial HP Tons. For commercial Hotplant contracts, Buyer agrees to take possession of Products in a Ratable fashion unless previous arrangements have been agreed to in writing by Seller. In the event Buyer does not take possession of Products in a Ratable fashion, Seller reserves the right to reduce any committed quantities upon providing 15 day advance written notice to Buyer. Seller recognizes that weather and seasonality may impact Buyer's delivery schedule.

22. Enforceability. In order to be enforceable, this Agreement must be executed and returned to Seller within ten (10) days of 3/18/2024 the date in the heading block. In the event Buyer accepts delivery of product from Seller without providing to Seller an executed copy of this Agreement, Buyer shall be deemed to have agreed to and accepted all of the terms and provisions of this Agreement and all product delivered to Buyer shall be subject to the terms and provisions of this Agreement to the same extent as if Buyer executed and delivered to Seller this Agreement. In the event of any conflict between the terms and provisions of this Agreement and any purchase orders or other documentation provided to Seller by Buyer, the terms and provisions of this Agreement shall take precedence and be controlling. Seller may, at its discretion, refuse to deliver product represented by this Agreement to Buyer until this Agreement has been executed in full by both parties.

BUYER:
TETON COUNTY - ID

By: _____ Date: _____

SELLER:
Idaho Asphalt Supply, Inc

By: _____ Date: _____